



# Environmental Appeal Board

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## DECISION NO. 2018-WIL-003(a)

In the matter of an appeal under section 101.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488.

<b>BETWEEN:</b>	Cassidy Caron	<b>APPELLANT</b>
<b>AND:</b>	Director, Wildlife and Habitat Branch	<b>RESPONDENT</b>
<b>AND:</b>	BC Wildlife Federation	<b>PARTICIPANT</b>
<b>BEFORE:</b>	A Panel of the Environmental Appeal Board Gabriella Lang, Panel Chair	
<b>DATE:</b>	Conducted by way of written submissions concluding on August 24, 2018	
<b>APPEARING:</b>	For the Appellant:	Self-represented
	For the Respondent:	Geneva Grande-McNeill, Counsel
	For the Third Party:	Gary Paille

## APPEAL

[1] The Appellant, Cassidy Caron, is a licensed guide outfitter holding guide outfitter licence 100000700 (the "Licence"). The Licence authorizes the Appellant to guide persons to hunt game within the area set out in Guiding Territory Certificate number 400908, held by 109444 B.C. Ltd. The Appellant's Guiding Area is located primarily in a portion of Zone C of Management Unit 4-20 ("Zone 4-20C") in Region 4 - the Kootenay Region - of British Columbia.

[2] In a decision dated June 11, 2018, the Respondent, Jennifer Psyllakis, the Director, Wildlife and Habitat Branch, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (the "Ministry"), issued the Appellant her quotas for harvesting game species for the 2018/19 period (the "Decision"). Those quotas are one bighorn sheep and two moose. The Appellant received the Decision on June 19, 2018.

[3] The Appellant appealed the Decision because she did not receive a quota to harvest a mountain goat in her Guiding Area for 2018/19.

[4] The Environmental Appeal Board has the authority to hear this appeal under section 101.1 of the *Wildlife Act* (the "Act"). Section 101.1(5) provides:

(5) On an appeal, the appeal board may

- (a) send the matter back to the regional manager or director, with directions,
- (b) confirm, reverse or vary the decision being appealed, or
- (c) make any decision that the person whose decision is appealed could have made, and that the board considers appropriate in the circumstances.

[5] The Appellant asks the Board to reverse the Respondent's Decision and amend her Licence for 2018/19 to include a quota for one mature, male mountain goat in guiding territory 400908.

[6] The Respondent asks that the appeal be dismissed.

[7] On July 13, 2018, the Board granted the BC Wildlife Federation ("BCWF") Participant status in this appeal. The BCWF represents resident hunters in the Province. The Board limited the BCWF's submissions to addressing the potential impacts of this appeal on the Provincial Wildlife Harvest Allocation Policy and the interests of the members of the BCWF. The BCWF supports the Respondent's position and asks that the appeal be dismissed.

## BACKGROUND

### *Guide Outfitter Licences and Quotas*

[8] Every year, guide outfitters apply to the Ministry to renew their guide outfitter licences and to request a hunting quota for specific animal species. The Ministry's quota decisions have been appealed to this Board numerous times. In its quota decisions, the Board has reviewed, in detail, how the Province regulates hunting and guiding, explaining the applicable legislation, and setting out the policies and procedures that the Ministry follows when allocating annual species' quotas under the *Act* (see for example: *Findlay v. Deputy Regional Manager, Recreational Fisheries and Wildlife Program (Thompson/Okanagan Region)*, (Decision No. 2013-WIL-033(a), April 24, 2014; *Robert J. Cutts v. Deputy Regional Manager*, (Decision No. 2013-WIL-024(a), July 17, 2014); and *John Parker v. Deputy Regional Manager (Kootenay/Boundary Region)*, (Decision No. 2017-WIL-011(a), September 29, 2017)).

[9] The Panel, therefore, will not provide a detailed review of all of the legislation, policies and procedures applicable to hunting and guiding in the Province but, instead, will briefly summarize the legislation and policies relevant to this appeal.

[10] The following sections of the *Act* apply to the Decision made by the Respondent.

[11] The authority to attach quotas to licences is provided in section 60 of the *Act*, which states:

**60(1)** If a regional manager issues a guide outfitter licence, the regional manager may attach a quota as a condition of the licence and may vary the quota for a subsequent licence year.

[12] Under section 100 of the *Act*, a director, such as the Respondent in this case, may do an act or a thing that a regional manager is empowered to do under section 60.

[13] "Quota" is defined in section 1 of the *Act* as:

(a) the total number of a game species, or

(b) the total number of a type of game species

specified by the regional manager that the clients or a class of client of a guide outfitter may kill in the guide outfitter's guiding area, or part of it, during a licence year, or part of it, but does not include an angler day quota.

[14] Attaching a quota to a guide outfitter's licence is a discretionary decision made by a regional manager pursuant to section 60 of the *Act*, following defined requirements that can vary by species and by areas of the Province. The specific requirements for determining mountain goat quotas are set out later in this decision.

[15] When making harvest allocation and quota decisions, a regional manager considers population estimates for a specific species and then, after meeting conservation objectives, considers the harvest allocation in the following order: first, harvest by First Nations; second, harvest allocations among resident hunters; and finally, harvest among guided hunters. Guided hunters are generally non-resident hunters.

[16] The allocation of available harvest for resident hunters and guided hunters is the Annual Allowable Harvest ("AAH"). Ministry policies and regulations define the percentage split of the AAH between resident and non-resident hunters for each species in each region. The allocations are generally set out in regulations.

[17] The available harvest for non-residents is provided through a five-year harvest allocation for guide outfitters; that is, the maximum number of animals that a guide outfitter's clients may take over that period. A guide outfitter's quota for animals is determined annually within the five-year allocation.

[18] When the Ministry decides that it is necessary to limit hunters in a certain area, to limit the number of animals that may be taken or to limit the harvest to a certain class of animals, the Ministry issues a limited entry hunt ("LEH") for resident hunters through legislation. The *Limited Entry Hunting Regulation*, B.C. Reg. 134/93 sets out the specific hunting restrictions for specific game species within specific zones. It also provides the director with authority to determine the number of LEH authorizations to be issued by an annual lottery for each limited entry game species (section 8).

### *The Appeal*

[19] In her notice of appeal, the Appellant stated that in the fall of 2017 she observed 36 goats in one part of Copper Creek. She also stated that as a resident hunter, she is familiar with the LEH for mountain goat for Zone 4-20C.

[20] The Appellant stated that resident hunters are allocated three goat permits in Zone 4-20C, but she does not believe that the low harvest reflects low goat populations. She submitted that the resident hunters are not using the road closure areas of Buhl and Copper Creek to hunt mountain goats.

[21] Therefore, the Appellant submitted that her Licence should be amended to add a quota for one mountain goat harvest for 2018/19.

[22] The Respondent's position is that her Decision was made fairly, within her discretion and on the basis of the information before her. Therefore, the appeal should be dismissed.

[23] The BCWF supports the Respondent's position.

## **ISSUES**

[24] Whether it is reasonable and appropriate to grant the Appellant a quota for a guided hunter harvest of one mountain goat for 2018/19 in the circumstances.

## **DISCUSSION AND ANALYSIS**

### *Appellant's Position*

[25] The Appellant submitted that the population of mountain goats in her guiding area is "quite hardy" and, therefore, the Respondent should have given her a quota for one mountain goat. As evidence of the health of the mountain goat population, the Appellant stated that she personally observed 36 goats rutting in November 2017 in the drainage of Copper Creek, over 12 kilometers past the motor vehicle closure area. She also observed eight goats in Buhl during her recent spring black bear season.

[26] The Appellant also stated that, as a resident hunter, she is familiar with the LEH for mountain goat in Zone 4-20C. Resident hunters are allotted three limited entry mountain goat tags in Zone 4-20C yearly. Therefore, she questioned why it would be unsustainable for a guide outfitter to receive one mountain goat tag.

[27] The Appellant further submitted that she does not believe that low harvest by resident hunters reflects low goat population. She stated that she knows the area very well and, according to her, resident hunters are not using the road closure areas of Buhl and Copper creek to hunt mountain goats.

[28] She stated that she has over 10 year's experience in guiding horned game in Western Canada, and she is 100% sure that she could harvest a mature billy goat in what she described as an "under-hunted zone".

[29] The Appellant asked the Board to allot to her one outfitter mountain goat tag in a zone where there is an LEH season for mountain goat for the 2018 hunting season.

*Respondent's Position*

[30] The Respondent's position is that:

1. Her quota decision was made fairly, within her discretion and on the basis of the information before her. That information included the most current mountain goat population estimates, current Ministry policy, and current Ministry management objectives for mountain goats; and,
2. The Appellant did not offer any compelling reason for the Board to interfere with the Respondent's Decision.

[31] In her response, the Respondent detailed the information that she considered and her decision-making process, primarily through two affidavits:

- an affidavit sworn by her on August 13, 2018; and,
- an affidavit sworn by Irene Teske, Ministry Wildlife Biologist, on August 8, 2018.

[32] These affidavits provided details about how Ms. Teske and the Respondent considered information about the population health of mountain goats, applied various policies and procedures, and calculated allocations for harvest. The Panel has summarized that information as follows.

[33] In her affidavit, the Respondent stated that she applied the following policies and procedures when she made her Decision.

1. The Game Harvest Management Policy states in part that:
  - "sustainable harvest" of game species is a legitimate use of British Columbia's wildlife resource that provides social and economic benefits to the province. "Sustainable harvest" is defined as the number of animals that can be harvested from a population year after year without reducing the population over time. Harvest opportunities will be well regulated commensurate with conservation and the high importance of the wildlife resource to British Columbian's.
  - where harvest is sustainable, the priority for harvest will be First Nations use, then resident use, and then non-resident use.
  - non-residents typically may hunt big game, including mountain goats, only under the supervision of a licenced guide outfitter. Therefore, the guide outfitters quota allocations are the lowest priority, that is last. Also, the calculations for guide outfitter quotas are made separately.
2. The Minister's February 6, 2015 Policy Direction ("Minister's Policy") for Resident/Non-Resident Harvest Allocation Splits, currently used by the Ministry, states that:
  - the resident/non-resident harvest allocation split is 65% resident and 35% non-resident for mountain goats in Region 4 (Kootenay Region).

3. The Mountain Goat Harvest Management Procedure (“Mountain Goat Procedure”) sets out the management considerations and procedures specific to mountain goat populations and harvests as follows:
- mountain goat populations are generally to be managed at the population level and to avoid population declines. Mountain goats are a species that are highly sensitive to overharvest due to their low reproductive rates and males cannot be consistently identified for harvest.
  - population estimates based on direct counts should be adjusted to account for a visibility bias using a sightability correction; provides guidance on the use of sightability correction factors.
  - populations that are isolated and comprising less than 50 adults should not be hunted due to population viability concerns.
  - harvest rates should be based on the estimated size of the mountain goat population and recent percentage of female mountain goats in the harvest area and should not exceed the rates described in the policy.
  - recommends maximum harvest rates and maximum percent females in harvest for different sized mountain goat populations. The AAH for each mountain goat population should be calculated by applying a harvest rate of not more than 3% to populations estimated at 100 or more individuals; 2% when between 50-100 and 0% when fewer than 50.

[34] In her affidavit, the Respondent also described how she considered the mountain goat population estimates and harvest allocation recommendations provided by Ms. Teske, and Mr. Kim Poole, a contractor for the Province.

[35] Ms. Teske has seventeen years of experience in her current position and is responsible for mountain goat management. She attested to how mountain goat population estimates were calculated in Region 4, and how recommended harvest allocations were determined.

[36] For the population estimates of mountain goats, including the estimates for the Appellant’s Guiding Area, Ms. Teske stated that she relied on detailed calculations prepared primarily by Mr. Poole. Mr. Poole is a Wildlife Biologist who has worked extensively on mountain goat inventories and projects within the Kootenay and other regions of the Province since 1997. He was hired to assist with mountain goat inventories and to update population estimates.

[37] Based on her work in Region 4, Ms. Teske stated that she knows that the population estimates are based on the actual number of mountain goats observed, and on the observation locations viewed during aerial surveys done in 2005 and 2014. She participated in a number of those aerial surveys.

[38] Ms. Teske also explained how populations are adjusted upwards to account for visibility bias consistent with the Mountain Goat Procedure. Because raw aerial survey numbers did not account for sightability, Mr. Poole adjusted the raw mountain goat numbers within the Appellant’s Guiding Area for sightability by

applying a sightability correction factor of 0.60. When applied to the raw population of 5 mountain goats, the resulting population estimate was eight goats.

[39] Based on this work, Ms. Teske stated that the mountain goat population in Zone 4-20C is estimated to be 25 goats. She also stated that the mountain goat population in Zone 4-20C is believed to be continuous with herds to the southwest, west and north in Zones 4-20A and 4-26A. The total estimated mountain goat population for those three zones is 204.

[40] The calculations and estimates are attached as exhibits to her affidavit.

[41] Ms. Teske further stated that, consistent with the Mountain Goat Procedure, a harvest rate of 3% could be applied to Zone 4-20C. However, data from the 2014 mountain goat inventories indicated population declines within the southern Purcell mountains within Region 4. Therefore, Ms. Teske applied a conservative 2% harvest rate to Zone 4-20C, resulting in an AAH of 0.5 goats.

[42] After reviewing Ms. Teske's and Mr. Poole's data and calculations, the Respondent stated that she accepted the sightability-adjusted sub-population estimate of 25 goats in Zone 4-20C, eight of which were proportionately estimated to be within the Appellant's Guiding Area. The Respondent also considered the larger interconnected mountain goat population, for a total population estimate of 204 goats. She therefore determined that the overall population was sufficient to sustain a small harvest.

[43] However, the Respondent also stated that she was aware of surveys in 2014 showing a 48% population decline from 2005 in portions of Zones 4-20C and 4-26A. Therefore, she accepted Ms. Teske's recommendation to apply a conservative 2% harvest rate to the sub-population of 25 goats in Zone 4-20C, resulting in an AAH of 0.5 goats.

[44] Next, the Respondent stated that she applied the Minister's Policies which recommended allocation splits for Region 4. Based on Ms. Teske's calculations, this resulted in a 65% resident share of 0.3 goats of the sub-population in the Appellant's part of Zone 4-20C. The resident hunter success rate for goats in that Zone was less than 10% over the previous three years. Therefore, the Respondent determined that three LEH authorizations could be made available within Zone 4-20C without resident hunters exceeding their share of 0.3 goats.

[45] The Respondent noted that only the western portion of the Appellant's Guiding Area has viable goat habitat. Therefore, only a small portion of the Zone 4-20C mountain goat population was apportioned to the Appellant's territory.

[46] Relying on information provided by Ms. Teske, the Respondent multiplied the Appellant's Guiding Area population estimate of eight goats by the 2% harvest rate and by the 35% non-resident share, resulting in a non-resident AAH of 0.056 within the Appellant's Guiding Area for 2018/19. This cannot be rounded up to one mountain goat.

[47] Because there was an insufficient mountain goat population within the Appellant's Guiding Area (where three LEH authorizations were issued) to support any guided harvest in 2018/19, the Respondent determined that the Appellant's mountain goat quota for 2018/19 was zero.

[48] The Respondent submitted that she also relied on her background in conservation biology and wildlife management, including working as a field biologist, to consider the mountain goat population estimates and arrive at a population estimate for the Appellant's Guiding Area. The Respondent provided a copy of her curriculum vitae as evidence in this appeal.

[49] The Respondent further submitted that giving the Appellant any mountain goat quota for 2018/19 would mean either taking away the resident hunter goat allocation, contrary to the resident hunter priority in the Minister's Policy, or exceeding the AAH of 0.5 goats within the already small Zone 4-20C sub-population of 25 goats, contrary to the management objectives for this species.

[50] The Respondent also stated that the fact that LEH authorizations for mountain goat are issued for Zone 4-20C is not necessarily evidence of a healthy population, and has no bearing on whether harvest is available to guide outfitters within the Appellant's guiding territory. For sensitive big game species, such as mountain goat, general open seasons are rare. An LEH authorization is required (in addition to a hunting licence) for residents to hunt mountain goats, and then only during the times and in the areas established by regulation.

[51] Moreover, the Respondent maintained that, despite the low success rates of resident hunters, it would be imprudent to assume that they will not harvest any mountain goats in 2018/19. Therefore, the fact that three LEHs are available within the much broader Zone 4-20C is not a sufficient reason to grant the Appellant mountain goat quota this year.

[52] The Respondent also explained that the total number of authorizations must be determined by the decision-maker, such as herself, on a zone-by-zone basis, following the mandatory criteria in the regulations. She explained that the range of possible LEH authorizations, also determined by regulation, is 1-50 in Zone 4-20C. This means that, unless the area is closed to mountain goat hunting, a minimum of one LEH must be made available annually within that zone.

[53] The Respondent further pointed out that there is no minimum quota that must be made available to guide outfitters for any species.

[54] The Respondent submitted that she made the Decision on the basis of the information before her and in accordance with sound harvest management practices. The Respondent also submitted that she achieved a fair balance of the competing interests of the involved stakeholders. Therefore, her Decision should be confirmed.

#### *BCWF Position*

[55] The BCWF supported the Respondent's calculations of the mountain goat population estimates, stating that those estimates were based on the best available science.

[56] The BCWF also cited Ministry policies and procedures for the allocation of hunt between residents and non-residents for mountain goat in Region 4; that is 65% residents, 35% non-residents. The BCWF reviewed the Respondent's



allocation calculations and submitted it was properly applied to arrive at the Appellant's mountain goat quota.

*The Panel's Findings*

[57] In an appeal to the Board, the Appellant has the burden of providing evidence to support her position. In this case, that means providing evidence that the mountain goat population in her Guiding Area is healthy enough to sustain a quota of one mountain goat for a guided hunter. She also has the burden of demonstrating that the Respondent's harvest allocations and quota decision for mountain goat were not based on sound information and/or a proper application of relevant legislation, policies and procedures.

[58] The Appellant submitted that the mountain goat population in her Guiding Area is sufficiently healthy for a guided hunt in 2018/19. She based her submission on her personal observations of 36 mountain goats in the fall of 2017 and eight mountain goats in the spring of 2018. These observations are the Appellant's only evidence of a "hardy" goat population in her Guiding Area.

[59] In contrast, the Respondent's evidence of the mountain goat population is based on population surveys and detailed calculations, together with evidence of a decline in population in areas that include the Appellant's Guiding Area.

[60] The Panel finds that the Respondent's evidence of the health of the mountain goat population in the Appellant's Guiding Area is more substantive and more persuasive than the Appellant's. The Panel accepts the population estimates provided by the Respondent as well as the evidence of declining health of the mountain goat population in that area, all of which determined what the Respondent could allocate for harvest.

[61] The Appellant also submitted that, based on her extensive guiding and hunting experience in Zone 4-20C, resident hunters are not using their allocations and, therefore, there should be an adjustment to the number of mountain goats available for harvest by guide outfitters. The Appellant cited no legislative authority, policies or procedures to support this argument.

[62] In contrast, the Respondent submitted a detailed explanation about how harvest allocations and quotas were established for resident and non-resident (guided) hunters for mountain goats.

[63] The Respondent explained how she applied relevant policies and procedures, such as the Game Harvest Management Policy. That policy states that where harvest is sustainable, the first priority will be First Nations use, then resident use, and finally, non-resident use; that is, the guide outfitter's allocation. The Respondent also provided detailed information about how the AAH for mountain goat in the Appellant's Guiding Area was apportioned between resident and non-resident hunters, all of which was consistent with the Ministry's policies and procedures.

[64] Based on the evidence, the Panel finds that the Respondent considered and applied all of the relevant legislation, policies and procedures applicable to allocating mountain goat harvest when making her Decision. The Panel also finds

that it is clear from the various Ministry policies and procedures cited by the Respondent that, whether or not resident hunters use their harvest allocation of animals during a certain period, has no bearing on a quota decision for guided hunters.

*Conclusion*

[65] Based on the parties' evidence and submissions, the Panel finds that the Appellant did not establish that the Respondent failed to assess, or inadequately assessed, the health of the mountain goat population in her Guiding Area, and/or failed to follow the relevant legislation, policies, and procedures when allocating the mountain goat harvest.

[66] The Panel further finds that the Respondent reasonably exercised her discretion under section 60 of the *Act* when she decided not to grant the Appellant a quota for a guided hunter harvest of one mountain goat for 2018/19.

[67] Finally, after considering all of the evidence and available information afresh, the Panel similarly finds that the Appellant should not be granted her request for a guided hunter harvest of one mountain goat for 2018/19 in the circumstances.

**DECISION**

[68] In making this decision, the Panel has carefully considered all relevant documents and evidence before it, whether or not specifically reiterated here.

[69] The Panel confirms the Respondent's Decision.

[70] The appeal is dismissed.

"Gabriella Lang"

Gabriella Lang, Panel Chair  
Environmental Appeal Board

September 26, 2018